



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

November 7, 2019

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Tammy M. Owens
City Attorney and Chief Legal Counsel
City of Overland Park
8500 Santa Fe Drive
Overland Park, Kansas 66212

RE: Request for an Attorney General Opinion

Dear Ms. Owens:

As City Attorney for the City of Overland Park, you ask for our guidance on the “tension between laws prohibiting discrimination on the basis of sexual orientation and gender identity, and the federal and/or state religious freedom acts.” Specifically, you ask the following questions:

Question 1: Should decisions applying the federal RFRA [religious freedom restoration act], Kansas Constitution, Religious Land Use and Institutional Persons Act (RLUIPA), or some other source of law be used to apply the KPRFA [Kansas Preservation of Religious Freedom Act]?

Question 2: Does imposing a fine in an amount of \$500, or seeking an injunction, constitute a “substantial” burden under the KPRFA [Kansas religious freedom restoration act].”

Question 3a: Under the KPRFA, do governmental entities in Kansas have compelling interest(s) in prohibiting discrimination on the basis of sexual orientation and gender identity or expression in housing, employment, and public accommodations?

Question 3b: Assuming there are compelling interests in prohibiting discrimination (including on the basis of sexual orientation and gender identity), is it correct that the “more focused inquiry” standard is not required for NDOs [non-discrimination ordinances], given the broad interests served by anti-discrimination laws, which may be fundamentally undermined by the “more focused inquiry” standard?

Question 3c: Assuming that uniform application of NDOs serves a compelling state interest in prohibiting discrimination (including based on

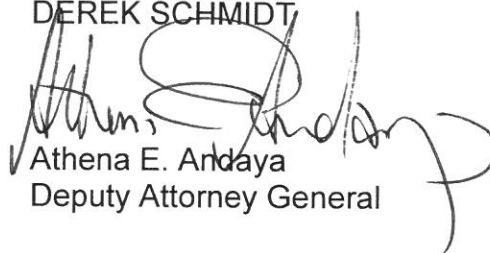
sexual orientation and gender identity), are such NDOs the least restrictive means of achieving that compelling interest under the KPRFA?

It is with regret that we decline your request for a formal written opinion due to the press of other duties, responsibilities, and other business. We do not have the resources required to respond to this discretionary request. See K.S.A. 75-704 and the Attorney General's Statement of Policy Relating to the Furnishing of Written Opinions.

If you have any questions in this regard, please do not hesitate to contact me.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT



Athena E. Andaya
Deputy Attorney General

Enclosures
AEA:sb

ATTORNEY GENERAL'S STATEMENT OF POLICY
RELATING TO THE FURNISHING OF WRITTEN OPINIONS

The Attorney General of the State of Kansas has established the following statement of policy relating to the issuance of written opinions.

1. The Attorney General is required by K.S.A. 75-704 to furnish written opinions upon questions of law submitted by the Legislature, or either branch thereof, or by the Governor, Secretary of State, State Treasurer, State Board of Education, or Commissioner of Insurance.
2. All other opinions are issued at the discretion of the Attorney General taking into consideration the significance of the issue to the state, the resources required to address the issue, availability of such resources, and other determinative factors.
3. Opinions may be issued to individual members or committees of the Legislature, state officers, and agencies. Only questions of government or statewide interest as determined by the Attorney General will be addressed. The Attorney General cannot act as legal counsel to individual constituents of public officials.
4. A request for the opinion by a state agency must be signed or endorsed by the chief executive officer or chief legal counsel of such agency.
5. The Attorney General may furnish written opinions to all County and District Attorneys in order to properly consult with and advise such attorneys in matters pertaining to their official duties. This does not extend to assistant or deputy county or district attorneys.
6. The Attorney General may furnish written opinions to the governing bodies of local governmental subdivisions, municipalities, or agencies. A request for an opinion by a local unit of government must be submitted by the governing body or chief legal counsel thereof. Such requests may not be submitted by individual members of such governing body.
7. The Attorney General may furnish written opinions to elected county officers if the request for opinion has first been submitted to the county attorney or county counselor. Information and advice received from the county attorney or county counselor must be included with the request.

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8. All requests must contain a complete statement of the problem, together with a clear, concise question of law. All facts and questions must be stated in the correspondence. Only questions of law will be answered.
9. Where opinions are requested on behalf of agencies, officers, or governmental units which have legal counsel available, the legal research and conclusions of such counsel shall be included with the opinion request. Interested parties may submit legal briefs regarding opinion requests.
10. In order to invite legal input, requests may be shared with persons or entities believed to have knowledge in the area of law or a legal position on the issue that is the subject of the request.
11. The Attorney General will not furnish opinions on issues threatened, pending or scheduled for determination by the courts, including appeals from orders issued by quasijudicial bodies.
12. Exceptions to the foregoing may be granted by the Attorney General where necessary and appropriate.
13. All opinions shall be written in accordance with K.S.A. 75-704a.
14. Opinions of the Attorney General are only valid and in force from and after approval and signature by the Attorney General.

Derek Schmidt
Attorney General of Kansas

75-704. Aid to county attorneys; opinions. The attorney general shall consult with and advise county attorneys, when requested by them, in all matters pertaining to their official duties. The attorney general shall also, when required, give his or her opinion in writing, without fee, upon all questions of law submitted to him or her by the legislature, or either branch thereof, or by the governor, secretary of state, state treasurer, state board of education, or commissioner of insurance.

History: L. 1879, ch. 166, § 73; R.S. 1923, 75-704; L. 1968, ch. 14, § 2; L. 1974, ch. 364, § 15; Jan. 13, 1975.

Source or Prior Law:

L. 1861, ch. 58, § 45; G.S. 1868, ch. 102, § 66.